UKRAINE

In 1999, the U.S. trade deficit with Ukraine was $163 million, an increase of $154 million from 1997. U.S. merchandise exports to Ukraine were $368 million, a decrease of $37 million from the level of exports in 1997. Ukraine was the United States' 72nd largest export market in 1998. U.S. merchandise imports from Ukraine were $531 million, up $117 million from 1997.

Ukraine received USD 705.2 million in foreign investment for the first nine months of 1998 which is 40.6 percent more than for the same period in 1997. At the same time, investors withdrew USD 131.8 million in capital for the same period. Ukraine's total foreign investment as of October 1998 was USD 2.619 billion. The seven largest investing countries -- USA, Netherlands, Germany, Cyprus, Russia, Great Britain, and Korea -- accounted for USD 1.625 billion. The United States remains the largest investor in Ukraine, accounting for USD 481.3 million as of October 1998, or 18.4 percent of the total amount of foreign investment. U.S. investment in Ukraine is distributed in the following main economic industries: food - USD 73.9 million, domestic trade - USD 91.7 million, finance, credit, insurance, pension security - USD 25.9 million, machine building and metal processing - USD 39.2 million, communication - USD 29.6 million, agriculture - USD 22.5 million, non-ferrous metallurgy - USD 18.8 Million, flour-milling and mixed feed manufacturing - USD 18.2 million, chemical - USD 20.4 million, construction - USD 33.3 million, and other industries - USD 107.8 million.

As of December 1998, there were more than 300 U.S. companies operating in Ukraine.

Trade relations between the United States and Ukraine are governed by the U.S.-Ukraine trade agreement, which entered into force in1992. Under the terms of the bilateral agreement, both countries grant each other Most-Favored Nation (now referred to as "Normal Trade Relations") status. Ukraine is in the process of acceding to the World Trade Organization.

IMPORT POLICIES

The different import duties and taxes in Ukraine present a major obstacle to trade. For example, import duties range from 5 to 200 percent, excise taxes range from 10 to 300 percent, and VAT is 20 percent.

Ukraine has high protective tariffs on a number of products entering the Ukrainian market. In general, Ukraine has two kinds of tariff rates -- general or full-rate tariffs, and preferential or partial-rate tariffs. Preferential tariff rates vary according to the type of products imported. Imports from western countries are generally assessed preferential tariffs. Import duties largely depend on whether a similar item to that being imported is produced in Ukraine; if so, the rate may be higher.

U.S. exports to Ukraine receive preferential customs rates if the following three criteria are met: (1) the company is registered in the United States; (2) the goods have a certificate to prove U.S. origin; and (3) the goods are imported directly from the United States. There are no special registration or other requirements, according to the state customs committee.

Duties on goods imported for resale are subject to varying ad valorem rates. Imported goods are not considered legal imports until they have been processed through the port of entry and cleared by Ukrainian customs officials. Import licenses are required for few goods, primarily medicines, pesticides, and some industrial chemical products.

A list of goods subject to excise taxes includes alcohol (a December 11, 1998 law raised excise tariffs for imported alcoholic beverages from 5 to 7.5 ECU per liter, and lowered them for locally produced alcoholic beverages), tobacco (affected by the same law), cars, tires, jewelry, and other luxury items. Excise duty rates are expressed as a percentage of the declared customs value, plus customs duties and fees paid for importing products.

Ukraine's liquor tax system discriminates against imported products and provides protection for domestic producers. For example, under this system, all imported distilled spirits are taxed at a rate of three ECU per liter. However, brandy produced domestically is taxed at a rate of 0.25 ECU per liter. This preferential treatment is due to be eliminated by 2000.

A limited number of goods, including raw materials, component parts, equipment, machinery, and energy supplies imported by commercial enterprises for "production purposes and their own needs" are exempted from VAT. Many agricultural enterprises are also exempt from VAT.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ukraine's regulatory environment is chaotic and its certification and licensing procedures are one of the most serious obstacles to trade, investment, and ongoing business. U.S. businesses identify the standards and certification problems affecting the consumer goods industry as: 1) lack of constant, clearly defined standards and regulations; 2) registration schemes unfeasible for mass trade; 3) lack of procedural flexibility; 4) complex and lengthy import license procedures; 5) overly complex and expensive certification requirements; 6) uneven enforcement of requirements; and 7) inordinately high certification and licensing tees.

The Ukrainian system of standardization, certification, and licensing of foreign goods, because of its unpredictable processes, lack of transparency, and overall complexity, has been a major hindrance to investment in Ukraine. Consumer goods and telecommunications equipment are two particularly problematic sectors. Many problems stem from the certification procedures, which are poorly defined and difficult to discover, and from regulations that are evolving constantly, often with little advance notice. For many imported products, the certification process involves multiple agencies and requires multiple certificates. Local, regional and municipal authorities frequently request additional documentation beyond that mandated by the central authorities.

Sanitary and phytosanitary measures are another area of concern. Ukraine applies a range of measures which are not based on science or supported by risk assessment, and which differ substantially from international standards. The certification and approval process is lengthy, duplicative, and expensive.

GOVERNMENT PROCUREMENT

Ukraine has as yet no central public procurement law with uniform standards, although it has a draft law on government procurement under consideration. Regulations are the responsibilities of individual ministries, and are often not followed in practice. Among the problems faced by foreign firms are a lack of public notice of tender rules, the failure to state tender requirements, covert preferences in tender awards, awards made subject to conditions that were not part of the original tender, and the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ukraine has implemented a set of intellectual property laws, including laws covering patents, industrial designs, trademarks, and plant varieties. In 1994 Ukraine adopted a copyright law, a broadcast law, and regulations requiring distribution certificates for films and videos.

Ukraine is a member of WIPO and has acceded to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, the Berne Convention, and the Convention for the Protection of New Varieties of Plants, and is a signatory to the trademark law treaty. Despite having acceded to the Berne Convention in October 1995, Ukraine refuses to protect U.S. works created prior to 1973. It also does not provide criminal penalties for copyright infringement, although a proposal to add such penalties has been made. The U.S.-Ukraine bilateral trade agreement and the U.S.-Ukraine bilateral investment treaty both obligate Ukraine to protect U.S. copyrights.

Enforcement of intellectual property laws remains sporadic and inadequate. Ukraine has reportedly become a major regional producer and exporter of illegal optical disks (CDs, DVDs and CD-ROMs). Border enforcement and other provisional remedies are inadequate. U.S. right-holders question the efficacy of pursuing administrative and judicial remedies. There continues to be rampant video piracy in shops and street kiosks. Pirate videos of MPAA member company films regularly appear in Ukrainian kiosks within weeks of their U.S. theatrical release. Most are back-to-back copies of videos recorded from U.S. cinema screens. Organized criminal groups are heavily involved in video piracy.

Broadcast piracy is also widespread. There are three national television stations, two of which are run by Ukrainian state television and which broadcast original Ukrainian programming and retransmitted Russian signals. There are also many regional channels that almost exclusively broadcast pirated films. Some of these stations use legitimate U.S. videos to make pirate broadcasts, often broadcasting the U.S. "FBI" Anti-piracy warning at the beginning of those videos. Industry estimates losses that due to copyright piracy in Ukraine exceeded $120 million in 1998.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult tax and regulatory climate, increasing occurrences of crime and corruption, limited opportunities to participate in privatization, the absence of clear mechanisms to enforce intellectual property rights (thus creating a barrier to technology transfer to Ukraine), poorly defined and overly complex certification procedures, and a poorly-functioning and unstable legal system combine to create major obstacles to U.S. investment in Ukraine. In addition, the Government canceled previous privileges adopted for foreign investors (i.e., exemption from customs duties and VAT on imported products, and a five-year tax holiday), which further discouraged investors.

Foreign firms need to develop cautious and long-term strategies that take full account of the problematic commercial environment. Ukraine's burdensome and nontransparent tax structure remains a major hindrance to foreign investment and business development. Personal income and social security taxes remain very high. A presidential decree reduced combined payroll taxes from 48.5 percent to 37.5 percent effective January 1, 1999. The tax law was simplified this year, but there is not enough accumulated experience to assess the impact. At any rate, tax filing and collection procedures do not correspond to western countries. Import duties and excise taxes are often changed with little advance notice, giving foreign investors little time to adjust to new requirements. Foreign companies believe that the government seeks to fill its budget at their expense because they do not flee into the shadow economy. However, it is precisely the high rate of taxation, and its confiscatory nature, that has created the large shadow economy in Ukraine.

A council of independent experts, established by the President, has arbitrated in a number of disputes. Its rulings are not legally binding, but its decisions have generally been upheld. It is not a formal dispute mechanism, but the GOU would like to elevate it to such, for which it is seeking UNDP funding to make it more widely available to foreign investors.

To attract investments and remove obstacles to trade, Ukraine continued to create free economic zones (fez) in 1998 which would have a favorable regime for investors. Fez's were created in Kremenchuk and Donetsk oblasts, in the city of Slavutych, and in the Transcarpathia region. The government has also approved a fez for the Lugansk oblast.